

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2019-089VW
APPLICATION NO. _____

FAIRFIELD ABBEY PARK, LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

RECEIVED
19 OCT 11 AM 11:19
FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.0025(7)(c) and 67-21.003(1)(b)

FAIRFIELD ABBEY PARK, LP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of the Corporation's rule which requires a natural person principal by the third principal disclosure level. This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2019) and Chapter 28-104 of the Florida Administrative Code (2019). In support of its petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Fairfield Abbey Park, LP
5510 Morehouse Drive, Suite 200
San Diego, California 92121
Attn: Paul Kudirka
Telephone: (858) 824-6406
Email: pkudirka@ffres.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Hollie A. Croft, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: hollie.croft@nelsonmullins.com

3. Petitioner previously submitted an application to the Housing Finance Authority of Palm Beach County, Florida for an issuance of multifamily housing revenue note to be used for the acquisition and rehabilitation of that certain 160-unit multifamily housing development to be known as Brenton at Abbey Park (formerly known as Pinnacle at Abbey Park), located at 1921 Abbey Park Road, West Palm Beach Florida (the "Development"), and Petitioner is in the process of closing with the HFA, which closing is scheduled to occur around November 21, 2019. Petitioner has submitted an application to the Corporation for an allocation of 4% Housing Credits to fund a portion of the acquisition or rehabilitation of the Development.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.0025(7)(c), F.A.C. (2019) which requires the Petitioner to disclose a natural person principal by the third principal disclosure level when submitting the Principal Disclosure Form (defined below) in connection with the Non-Competitive Application Package and 67-21.003(1)(b), F.A.C. (2019) which adopts and incorporates the Non-Competitive Application Package (Rev. 04-2019) (collectively, the "Rule"). The specific provisions of the Rule from which Petitioner is seeking a waiver are as follows:

Rule 67-21.0025(7)(c), F.A.C (2019), which provides in relevant part:

(7) Disclosure of the Principals of the Applicant must comply with the following:

- (a) The Applicant must disclose all of the Principals of the Applicant (first principal disclosure level). For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required;
- (b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);
- (c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, **all of the Principals must be natural persons**; and
- (d) If any of the entities identified in paragraph (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), all of whom must be natural persons.

(emphasis added)

Rule 67-21.003(1)(b), F.A.C. (2019), which provides in relevant part:

(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. **The Non-Competitive Application Package or NCA (Rev. 04-2019) is adopted and incorporated herein by reference ...**

(emphasis added)

Section A.6.a. of the Non-Competitive Application Package provides, in relevant part:

6. Principals Disclosure for the Applicant and for each Developer:

- a. **Provide the Principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) (“Principal Disclosure Form”), as “Exhibit 3” to the Application form.** The Principals Disclosure Form is available on the Website at <https://www.floridahousing.org/programs/developers-multifamily-programs/non-competitive>.

The Principal Disclosure Form must identify, pursuant to subsection 67-21.002(86), the Principals of the Applicant and Developer(s). For Housing Credits, the investor limited partner of an Applicant limited partnership or the investor member of an Applicant limited liability company must be identified. **A Principals Disclosure Form should not include, for any organizational structure, any type of entity that is not specifically included in the Rule definition of Principals.**

(emphasis added)

D. STATUTES IMPLEMENTED BY THE RULE

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.* (2019) (the “Statute”).

7. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), *Fla. Stat.*

E. JUSTIFICATION FOR GRANTING THE WAIVER OF THE RULE

8. Petitioner is seeking a waiver from Section A.6.a. of the Non-Competitive Application Package, which requires the applicant to include with its application for non-competitive tax credits the Principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) (hereinafter, the “Principal Disclosure Form”), as an exhibit to the Non-Competitive Application Package. The application further requires that the applicant identify the principals pursuant to subsection 67-21.002(86), F.A.C., which provides the definition of who constitutes a “Principal” for disclosure purposes. Moreover, subsection 67-21.0025(7) of the Corporation’s rules provides specific requirements an applicant must comply with for the disclosure of “Principals”.

9. As such, for Petitioner to submit a Non-Competitive Application Package for 4% housing credits for the Development and comply with Section A.6.a. thereof, it must be able to submit the Principal Disclosure Form in accordance with not only Rule 67-21.002(86), but also Rule 67-21.0025(7)(c). Petitioner’s current ownership structure does not comply with the requirements of Rule 67-21.0025(7)(c). Therefore, Petitioner is also seeking a waiver of 67-21.0025(7)(c), which requires that by the third principal disclosure level of the Principal Disclosure Form, the Principals disclosed must all be natural persons except if the Principal is a trust, in which case the natural person Principal can be disclosed by the fourth principal disclosure level.

10. Petitioner cannot meet the requirement to have a natural person principal by the third principal disclosure level for the following reasons:

- a. Petitioner is majority owned and controlled by the California State Teachers' Retirement System (CalSTRS) pension fund. Petitioner’s

structure has various corporate layers to accommodate the fact that it is majority owned and controlled by CalSTRS, a public pension fund. The participants of the CalSTRS pension fund are continually changing and currently number in excess of 940,000 (teachers of the State of California), and therefore it is not practical or feasible to include in the Principal Disclosure Form.

- b. Further, the ultimate participants in the pension plan have no ability to control the investments and may change on a regular basis making it impossible to have Principal Disclosure Form which is submitted and does not change during the application process.

11. A waiver of the Rule will permit Petitioner to apply for non-competitive tax credits to finance a portion of the rehabilitation of the Development. Without this additional source of investor equity, the Petitioner will not have enough funds to preserve and rehabilitate these much needed 160 affordable units in West Palm Beach, Florida. Petitioner has already invested its own funds by acquiring the Development on July 24, 2019 with the intent to undergo an acquisition and rehabilitation of the Development. While the Development is currently encumbered by a SAIL Land Use Restriction Agreement until 2058, the re-syndication of the Development will extend the rent restrictions at the Development for an additional 30 years.

12. In this instance, Petitioner meets the standards for a waiver of the Rule. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Unless the Rule is waived to allow the Petitioner to apply for non-competitive housing credits with its current ownership structure, certain unreasonable, unfair and

unintended results will occur, resulting in a substantial hardship to the Petitioner and the Development. Specifically, the purpose of the Rule was for the Corporation to know who is participating in its programs. However, strict application of the Rule would lead to the unintended result that a public pension fund is not able to participate in the Corporation's programs as well as result in a substantial hardship to the Petitioner. In this specific instance, the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as Petitioner will not be able to apply for and obtain 4% housing credits and, as such, will not be able to complete the much-needed rehabilitation of the Development. The Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated. The Rule was implemented to permit the Corporation to ascertain the parties involved in its programs. Petitioner is able to provide to the Corporation natural person principals, but not by the third (or fourth) principal disclosure levels. Moreover, certain entities in Petitioner's ownership structure will have participants that is not feasible to disclose because they are numerous passive investors, such as the teachers that comprise the CalSTRS public pension fund.

13. The requested waiver of the Rule serves the purpose of the Statute that is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver of the Corporation's rule which requires a natural person principal by the third principal disclosure level, which will allow Petitioner to apply for non-competitive housing credits with its current structure, as requested in

this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

F. ACTION REQUESTED

14. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of the Corporation's rule which requires a natural person principal by the third principal disclosure level; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



Yisell Rodriguez, Esq.

Fla. Bar No. 117915

Hollie A. Croft, Esq.

Fla. Bar No. 886181

NELSON MULLINS BROAD AND CASSEL

390 N. Orange Avenue, Suite 1400

Orlando, Florida 32801

Telephone: (407) 839-4200

Facsimile: (407) 425-8377

Email: yisell.rodriguez@nelsonmullins.com

hollie.croft@nelsonmullins.com

COUNSEL FOR PETITIONER

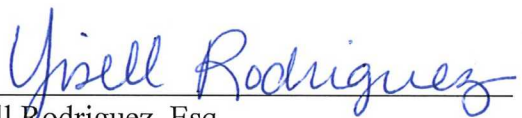
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 11th day of October, 2019.



Yisell Rodriguez, Esq.
Fla. Bar No. 117915